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**Chad Damro**  
**‘Market Power Europe and New EU Trade Policies’**

**I. Introduction**

It would be difficult to argue that the European Union (EU) is not a trade power. By comparative economic figures, the EU is a leading actor in today’s global economy and the ‘world’s largest presence in international trade’ (McGuire and Lindeque 2010, 1330). The sheer size of the EU as a single market with a common external tariff ensures its centrality in the international trading system. But this is not merely a recent development. While the Common Commercial Policy (CCP), dating from the 1957 Treaty of Rome, and subsequent treaty revisions provided the basis for the EU to develop into a trade power, the importance of the EU’s CCP today is amplified further through its operation as ‘a unique tool for forwarding policy priorities that extended beyond pure trade considerations’ (Dimopoulos 2010, 153).

While the EU must be taken seriously as a *trade* power, this status and its capacity to use the CCP to forward non-trade policy priorities speak to a broader conceptualisation of the EU as a power in the international system. More specifically, the historical and contemporary development of its trade policies helps to inform the conceptualisation of the EU as Market Power Europe (MPE) (Damro 2012). According to this conceptualisation, three central characteristics of the EU’s identity – market size, institutional features and interest contestation – may contribute to the drive and capacity to externalise its social and economic agendas. From this perspective, the exercise of power both within and beyond trade has been enhanced by the establishment of new generation trade policies, or legislation which attaches conditions for market-entry (see Intro chapter, this volume). As the EU strives to externalise its economic and social market-related policies and regulatory measures via free trade agreements and autonomous initiatives, new generation trade policies provide important tools to influence the behaviour of various non-EU actors. The themes and contributions of this edited volume, therefore, provide an excellent context in which to explore MPE, externalisation and the three characteristics that inform its identity.

The conditions associated with new generation trade policies help to draw a distinction between trade and non-trade objectives and reflect Meunier and Nicolaïdis’ understanding of the EU as a ‘conflicted trade power’. While the EU is clearly a power *in* trade, they argue that the EU is becoming a power *through* trade by using market access to promote policy changes abroad, such as environmental protection, higher labour standards, greater respect for human rights and ‘more generally to shape new patterns of global governance’ (Meunier and Nicolaïdis 2006, 907). These non-trade objectives that arise in new generation trade policies are based in EU primary and secondary legislation, but they also appear in clauses of free trade agreements and requirements and conditions of autonomous initiatives. Taken together, the trade and non-trade objectives can be seen as part of the economic and social market-related policies and regulatory measures that MPE attempts to externalise both in and through trade.

A central issue that arises in the analysis of new generation trade policies and the EU as a power is the problem of inconsistency between and among its trade and non-trade objectives. Long the focus of policymakers, the EU has sought to overcome this problem in practice with successive policy and institutional reforms. On the theoretical side, legal scholars have usefully focused on the codification of measures to ensure consistency, while

political scientists tend to analyse empirically the extent to which the EU is consistent in its external relations. This difference in approach may reflect each discipline's objectives, but the differences are not insurmountable.<sup>1</sup> As Wouters et al. put it, 'For legal scholars, the main challenge is giving empirical research methods a chance, whereas political scientists specialized in international relations need, above all, to overcome their treatment of international and EU law as merely an outcome of political processes and to engage more thoroughly in its interpretation' (2008, 54). Drawing from the contributions of legal scholars in this volume and the empirical treatment of the EU as a power, this chapter aims to provide insights for both disciplines' understandings of the challenges related to inconsistency that may arise in the pursuit of new generation trade policies.

For analytical purposes, the core of the problem with inconsistency is that any action that appears to be the promotion of one general non-trade objective may at the same time contradict or be inconsistent with the promotion of other general non-trade objectives. The analytical uncertainty about what exactly is being promoted and the inability to disentangle empirically what the EU is doing as a power leaves little room for scholars to generate with confidence any precise statements about what kind of power the EU really is or to judge what the EU says and does as a power. This inability to provide assurances that the EU is promoting a single broad or general objective at any given time is most problematic for conceptualisations of the EU as a power that depend on the EU promoting imprecise objectives such as 'civilian ends' or 'norms'.<sup>2</sup> However, these problems may be overcome with an MPE approach that emphasises a narrower and more empirical tracing of the EU's externalisation of trade and non-trade objectives. As such, this chapter contributes to discussions about the legal and political bases and ways and extent to which the EU is able to externalise various market-related policies and regulatory measures (trade and non-trade objectives) with a particular tool (new generation trade policies), regardless of the potential for inconsistency.

The remainder of the chapter proceeds in the following manner. The next section introduces the so-called 'EU as a Power' debates and elaborates the Market Power Europe conceptualisation and the importance of trade policy as a tool to externalise the EU's market-related policies and regulatory measures. The chapter then clarifies the contentious nature of EU efforts to externalise different types of new generation trade policies and the ways in which MPE's three characteristics help to inform the analysis. The following section highlights different disciplinary understandings and approaches to the issue of inconsistency as it relates to the EU as a Power debates and the treatment of specific and general, as well as trade and non-trade, objectives. The section also provides an exploration of how MPE's

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<sup>1</sup> Regarding disciplinary objectives, political science can often be seen as pursuing an explanatory agenda, whereas 'doctrinal law is normative perforce' (Engel and Héritier 2003, 11).

<sup>2</sup> The differences between law and political science are not always clearly drawn, which can lead to confusion in the use of terms like 'civilian ends' or the more widely used 'norms'. While there may be connections in understanding the meaning of 'norms' in these two disciplines, the approaches undertaken and ultimate analytical objectives are often different. A crucial difference for political scientists working on international relations (IR) is their tendency to view norms as having ideational causal effects. According to Finnemore and Sikkink, 'There is general agreement on the definition of a norm as a standard of appropriate behavior for actors with a given identity' (1998, 891). These norms, which often fall into different categories (regulative, evaluative and prescriptive), can affect and change the interests and identity of actors. However, while 'customary international law is norms', international law 'has been ignored by IR scholars for decades' (Finnemore and Sikkink 1998, 916). For an excellent discussion of the similarities and differences between political science and international law treatments of norms, see Hafner-Burton et al. (2012).

empirical approach may help to overcome the analytical pitfall of inconsistency when investigating new generation trade policies. The chapter concludes with a summary of the findings.

## **II. Market Power Europe and the Importance of Trade Policy**

For legal scholars, the relationship between EU external relations and international law is a growing area of inquiry in which prominent contributions have shown that the EU is a significant international legal actor that often attempts to export its legal framework on a multilateral basis (Van Vooren and Wessel 2014; Kuijper et al. 2013; Eeckhout 2011; Wessel 2011) and contributes to the international rule of law across various policy areas (Bradford 2012, Scott 2014, Van Vooren et al. 2013). The literature's focus on legal dimensions, while understandable, tends to neglect the concept of power as a central analytical tool for understanding the way and extent to which the EU may influence other actors in the international system. In contrast, the concept of power has been 'eternally fundamental to political science' (Hafner-Burton et al. 2012, 51). By considering power in the context of the EU's external relations, we can ascertain the conditions under which international law may enable or constrain the ability of this actor to determine its own circumstances.

In the social sciences, and especially political science, the study of the EU in international affairs has resulted in a proliferation of competing conceptualisations of the EU as a power. These 'EU as a Power' debates often focus on the EU's particular characteristics and prioritise questions about what kind of power the EU is, what the EU says as a power and what the EU does as a power (Damro 2012). Starting in 1972, Duchêne argued that the EU's unique characteristics made it a different kind of actor for which military power has been supplanted by civilian power. While the EU is now certainly understood as an influential global actor of some sort, it still compares uncomfortably with other traditional and legally-recognised actors like individual states and international organisations. This has helped to reinforce scholarly understandings of the EU as a unique or *sui generis* actor. According to these debates, the particular characteristics that provide the basis for the EU to be a power now range from the strategically constrained Small Power (Toje 2011), to the disjointed Fragmented Power (Sapir 2007), to the generally cautious Risk-Averse Power (Laïdi 2010), to, perhaps the most prominent, the ideationally influential Normative Power Europe (Manners 2002) and the Transformative Power Europe project.<sup>3</sup>

Another contribution to these debates – the conceptualization of the EU as Market Power Europe (MPE) – was not designed to explain the dynamics of trade policy alone. But if the EU is conceptualized as MPE, it is important to explore the ways in which this perspective sheds light on the EU's external trade relations. To do so, it is useful to provide a brief recapitulation of the conceptualisation.

As Market Power Europe, the EU's identity, both historically and presently, is crucially linked to its experience with market integration. However, the conceptualization does not require analysts to study the EU as a *sui generis* actor. Rather, using general insights from leading contributions to the comparative and international political economy literature, the EU as a power may be understood as a combination of three broad characteristics that contribute to any market power's identity: material existence in terms of market size (Drezner 2007), institutional features such as regulatory capacity (Bach and Newman 2007) and interest contestation (Dür and De Bièvre 2007). While these three characteristics are often

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<sup>3</sup> For the Transformative Power Europe project, see <http://www.polsoz.fu-berlin.de/en/v/transformeurope/>, accessed 29 January 2015.

treated as competing explanations, the MPE conceptualisation considers them inter-related and mutually reinforcing, which encourages us to explore the connections and relationships among the characteristics in order to generate a more complete understanding of the EU's identity and actions as a power (Damro forthcoming 2015).

MPE focuses on the EU's capacity to exercise its power through the externalisation of a wide array of market-related policies and regulatory measures. These policies and measures cover both economic and social regulation, some of which liberalises the market and some of which constrains market actors. Such externalisation can be considered to have taken place when another state or non-state actor adheres to a level of regulation similar to that in effect in the European single market or behaves in a way that generally satisfies or conforms to the EU's market-related policies and regulatory measures (Damro 2012, 690).

In terms of MPE's three characteristics, externalisation may be driven by the large size of the Single European Market, high levels of regulatory capacity and the pressure exerted by pro-externalisation coalitions of domestic groups in society. Such an exercise of power, which may occur (both coercively and persuasively) as intentional or unintentional action, suggests the EU is fully capable of influencing international affairs through a wide range of means and tools—e.g., the use of positive and negative conditionality, multilateral and bilateral legal instruments, formal and informal networks, internal regulatory measures—in its relations with both states and non-state actors. Many of these tools are often recognised in the EU studies and international legal literatures, and many feature prominently in the area of trade policy.

Trade policy holds a prominent place in relation to the conceptualization of MPE. In its historical development, the common market and the Common Commercial Policy (CCP) served as original and essential building blocks of European integration and EU identity. Highlighting further the importance of trade, Meunier and Nicolaidis argue that 'Historically, internal trade liberalization and external trade policy served as the glue to bind together the former enemies within Europe' (2006, 906-07).<sup>4</sup> The fundamental nature of trade policy for the EU is also witnessed in its constitutional prerogatives and placement. Indeed, the inclusion of trade policy within the EU's constitutional treaties underlines the importance of this policy area and encourages linkages with other external policies. So important is trade policy to the EU that, as Larik notes through comparison, 'it seems to be rather rare for a constitution to address specifically trade policy and its goals, much less to link it to a wider constitutionally entrenched foreign policy agenda. Hence, the latter remains a speciality of the EU' (this volume, 12).

This specialty of the EU contributes to the importance of trade policy for MPE because the CCP is cross-cutting in the sense that it touches upon various other policy areas. As a result, MPE's understanding of 'economic and social market-related policies and regulatory measures' can be broadly interpreted to cover all types of EU legislation and instruments (including standards set by private bodies) across a wide variety of policy areas and, conceivably, the entire *acquis*.<sup>5</sup> With the advent of new generation trade policies, the CCP is now a tool that may help increase the EU's externalisation of various trade and non-trade objectives, both of which may be seen as the market-related policies and regulatory measures that are central to the MPE conceptualisation.

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<sup>4</sup> On the importance of trade, see also Young and Peterson (2014).

<sup>5</sup> For a discussion of the purview of MPE's market-related policies and regulatory measures, see Damro (forthcoming 2015).

### III. MPE and the Contentious Nature of New Generation Trade Policies

As measures which attach conditions for market-entry, new generation trade policies are intimately related to EU efforts to externalise its market-related policies and regulatory measures. But the conditions attached to the new generation trade policies can be highly contentious because they include a variety of often-sensitive, non-trade objectives.<sup>6</sup> So, what exactly are these non-trade objectives that the EU externalises through trade policy?

Article 3.5 of the TEU lists the more general principles and goals, including trade and non-trade objectives, which will guide the EU's external action.<sup>7</sup> For the list of objectives more specific to external action, we turn to Article 21 TEU (see Figure 1). This article is based on Article 3 (Dimopoulos 2010) and includes an array of objectives for EU external action. While Article 21(2)(e) deals more directly with trade, non-trade objectives appear prominently throughout the remainder of the clauses. Dimopoulos (2010) classifies these Article 21 non-trade objectives into three categories: 1) democracy, rule of law, and respect for human rights, as well as the Union's security and integrity and the preservation of international peace and security; 2) quality of the environment and the sustainable management of global natural resources, as well as sustainable economic, social, and environmental development of developing countries; and 3) multilateralism and good governance.

**Figure 1: Article 21 TEU**

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

- (a) safeguard its values, fundamental interests, security, independence and integrity;
- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to

<sup>6</sup> These non-trade objectives may also be thought of as 'global public goods' (Chapter 1 in this volume), 'WTO-Extra' issues (Horn et al 2010) or linked to what Kerremans and Orbie (2009) refer to as the 'social dimension' of EU trade policies. Likewise, the 'normative' component of these objectives has led some to label them as 'civilian ends' or 'norms' that are often ascribed to the EU (Smith 2005; Manners 2002). To avoid confusion, this section refers to these various labels as 'non-trade objectives'.

<sup>7</sup> <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-1-common-provisions/4-article-3.html>, accessed 22 January 2015.

external borders;

- (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- (g) assist populations, countries and regions confronting natural or man-made disasters; and
- (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

Source: Consolidated Version of the Treaty on European Union [2008] OJ C115/13.

Article 21(3) places responsibility for ensuring consistency among these various trade and non-trade objectives with the Council, Commission and High Representative of the Union for Foreign Affairs and Security Policy. While this is a clear indication of the priority placed on the need for consistency, it does not clarify the exact meaning of the non-trade objectives contained in the article.

Given this rather ambiguous nature of non-trade objectives, it is hardly surprising that their pursuit in both types of new generation policies – FTAs and autonomous initiatives – can be highly contentious for EU trade partners. In addition to this ambiguity, an important reason for the EU's non-trade objectives being so contentious is that the extent to which they are universally held is debatable. And even if they were universally held, different trading partners understand them differently and do not always prioritise them in equal measure.

Regarding FTAs, the European Commission acknowledges that the negotiation of trade and non-trade objectives presents a 'significant and highly challenging' trade agenda for the EU (European Commission 2010, 9). But given the requirements in primary legislation (i.e., Articles 3 and 21 TEU), the EU's approach to FTAs focuses on the inclusion of mechanisms and provisions for a variety of non-trade objectives. For example, EU FTAs include provisions which aim to protect the environment, consumers, workers and the public at large via human rights and democratic principles as well as labour and environmental standards (Bartels, this volume). As Croquet (this volume) shows, the EU-Korea FTA includes non-trade objectives on climate change and corporate social responsibility. Leal-Arcas and Wilmarth (this volume) also show that the EU promotes various components of sustainable development in its pursuit of regional trade agreements.

The inclusion of such non-trade objectives in FTAs can be legally complex and raises important questions about ensuring consistency with other objectives. But their inclusion can



also be politically sensitive during the negotiation of this type of new generation trade policy. Indeed, as Khorana and Garcia argue, the negotiation of non-trade objectives is often so contentious that they can serve as ‘deal breakers’ (2013, 694). Despite the Article 21 requirement, such obstacles may help to explain why the EU has negotiated certain bilateral agreements that lack human rights clauses. For example, more narrow sectoral agreements, such as textiles can lack human rights clauses. Likewise, fisheries agreements can lack comprehensive non-trade objectives and bilateral agreements on trade in steel products also can lack binding human rights clauses.<sup>8</sup>

Beyond the new generation FTAs, the EU’s autonomous initiatives focus on incoming trade as a way to encourage development or reform in countries seeking to import goods into the EU. These initiatives can be thought of in two ways: 1) the Generalised System of Preferences (GSP) and GSP+, and 2) legislation that puts restrictions on the import of certain goods, thereby limiting access to the lucrative EU market. For both types of autonomous initiatives, MPE can use trade policy to externalise non-trade objectives based in the EU’s market-related policies and regulatory measures. Under the first types of autonomous initiative, the enhanced trade preferences that are offered through the GSP+ are clearly linked to a variety of non-trade objectives. More specifically, these preferences are granted to countries which ratify and implement international conventions relating to human and labour rights, environment and good governance (EU Regulation 978/2012).<sup>9</sup>

The second type of autonomous initiatives covers a variety of new regulations and directives that may also act as tools for externalising non-trade objectives, especially in relation to the activity of private actors. For example, Koekkoek and Ryngaert (this volume) show the potential to externalise EU environmental objectives and the protection of natural resources through the Timber Regulation (see also Geraets and Natens, this volume), the Renewable Energy Directive and the Seals Regulation. The Regulation on the prevention of illegal, unreported and unregulated fishing also provides a tool through which the EU can use an autonomous initiative to externalise related non-trade objectives like the protection of natural resources (Miller et al. 2014). While both types of autonomous initiatives can be used by the EU, such attempts at externalisation can be as contentious as efforts to negotiate non-trade objectives into FTAs.

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<sup>8</sup> For bilateral textile agreements that lack human rights clauses, see Agreement between the European Community and the Kingdom of Cambodia, on trade in textile products, *OJ* n° [L 349 \(24/12/2002\)](#); Agreement on trade in textile products between the European Community and the Lao People's Democratic Republic, *OJ* n° [L 16 \(22/01/2003\)](#); Agreement between the European Community and the Kingdom of Nepal on trade in textile products, *OJ* n° [L 326 \(22/12/2000\)](#); Memorandum of Understanding between the European Community and the Democratic Socialist Republic of Sri Lanka on arrangements in the area of market access for textile and clothing products, initialed in Brussels on 5 December 2000, *OJ* n° [L 80 \(20/03/2001\)](#); Agreement between the European Community and the Republic of Serbia on trade in textile products, *OJ* n° [L 90 \(08/04/2005\)](#). It should be noted that this agreement with Serbia only specifies in its preamble that it joins within the framework of the Stabilisation and Association process. However, a Stabilisation and Association Agreement between the EU and Serbia, which contains a human rights clause, came into force in September 2013 (*OJ* n° L 278 (18/10/2013)). For fisheries agreements, see [http://ec.europa.eu/fisheries/cfp/international/agreements/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm), accessed 2 February 2015. Steel product agreements may refer to partnership and cooperation agreements, which include human rights clauses. However, such references are typically mentioned in the preamble without binding power. Two examples are the Agreement between the European Community and the Russian Federation on trade in certain steel products, *OJ* n° L 300 (17/11/2007); and the Agreement between the European Community and the Government of Ukraine on trade in certain steel products, *OJ* n° [L 178 \(06/07/2007\)](#). The author is indebted to Katia Rochereuil (University Paris Sorbonne Abu Dhabi) for these insights. See also Rochereuil (2013).

<sup>9</sup> See also, Larik (this volume), Beke and Hachez (this volume), Yap (this volume), Orbie and Tortell (2009).



Because of the sensitive nature of non-trade objectives, the EU's use of its trade power to externalise them may not always be successful. But this would not undermine an understanding of the EU as MPE. Rather, any (in)decision to include such objectives in new generation trade policies should be broadly determined by the three characteristics of MPE. In short, the EU's large market size may create a strong but not completely irresistible incentive for other countries to engage with the EU's new generation trade policies and to consider abiding by the associated non-trade objectives. A variety of actors and institutional decision-making rules and capabilities (such as regulatory capacity) may influence the EU's externalisation but do not always determine that externalisation is the best course of action. The institutional features of the EU also help clarify the avenues through which interest groups and civil society actors may influence externalisation in such sensitive matters. Therefore, the existence of the three characteristics helps us understand when and perhaps why, despite their highly contentious nature, the EU is likely to pursue non-trade objectives in new generation trade policies.

#### **IV. The EU as a Power and the Analytical Pitfall of Inconsistency**

There are important practical reasons for EU policy-makers to worry about inconsistency: the EU's power in the international system can be seriously undermined when its external relations are inconsistent.<sup>10</sup> As Nuttall (2005) argues, such inconsistency can lead to serious failures of foreign policy and an inability to attain fundamental objectives.<sup>11</sup> In effect, it can increase confusion, undermine credibility and decrease legitimacy in internal and external perceptions of the EU as global actor. In addition to these practical pitfalls, scholars working in the EU as a Power debates can run into an analytical problem, or pitfall, related to the issue of consistency. This pitfall becomes particularly apparent in the context of new generation trade policies. As the EU increasingly becomes a power *through* trade, the scope for such inconsistencies between and among trade and non-trade objectives increases significantly and demands further attention and engagement from legal scholars and political scientists alike.

##### **A. Engaging Inconsistency**

From a legal perspective, the problem of inconsistency does not necessarily create an analytical pitfall for understanding the EU as a power. Essentially, this is so because legal scholars give less priority to generating general explanations about the EU's identity as a power and why it acts like a power. But this does not mean that legal scholars are uninterested in issues surrounding consistency. Rather, legal scholars often engage the issues by exploring the codification and interpretation of law as ways to avoid or overcome the practical problem of inconsistency. Much of this work starts by identifying the legal potential for inconsistency and the legal instruments that may increase the likelihood of consistency.

For example, as Larik (this volume) shows, there is potential for inconsistency between the EU's *general* treaty objectives and other more *specific* policy-based objectives,

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<sup>10</sup> While a number of scholars have identified different types of practical or policy inconsistency in EU external action, the discussion herein focuses upon what might be called 'internal' and 'horizontal' inconsistency within, between or among different policies (Gebhard 2011).

<sup>11</sup> For a discussion of how coherence relates to EU external effectiveness in global trade governance, see da Conceição-Heldt (2014).

such as trade policy.<sup>12</sup> Article 207(1) states that the CCP ‘shall be conducted in the context of the principles and objectives of the Union’s external action’, which makes clear that trade policy is part of external action and should, therefore, be conducted in line with the general objectives of external action (especially Article 21). But according to Krajewski, there is no hierarchy between the specific CCP and the more general objectives of Article 21. Rather, all objectives are of equal relevance (2012, 294).<sup>13</sup> Larik agrees, adding that ‘the weak binding force of such objectives makes discussion about any strict hierarchies between them a rather idle exercise. In view of the various evocations of the principle of ‘coherence’ and ‘consistency’ between different policies, all of the EU’s external objectives have to be pursued as an ensemble, geared towards its overall vision of “good global governance”’ (this volume, 19).

Of course, the pursuit of this ensemble is not always consistent in practice, which creates the analytical pitfall that will be discussed shortly. The primary complications for such pursuit can be seen as a mix of legal and political obstacles. As Dimopoulos argues, the legal and mandatory nature in the Lisbon Treaty of such objectives may be ‘softened... by their broad formulation’, which ‘leaves a great degree of discretion to the policy-making institutions to assess the means of action and the content of the chosen action. Articles 3(5) and 21 TEU impose arguably a justiciable obligation upon the EU institutions to pursue these objectives in the field of the CCP as well, but it leaves them a wide margin of appreciation to determine when, whether, and how these objectives can be pursued’ (2010, 165). Larik lends credence to the general point, arguing that ‘the width of these goals and their weak binding force limit their obligatory and prohibitive force, not least for adjudicatory purposes’ (this volume, 27). Institutional discretion – which may become politicised and may reflect different political priorities at different times – to interpret the legal provisions, therefore, increases the potential for inconsistencies in the practical pursuit of general and specific objectives. In short, the pursuit of consistency depends on political will (Van Elsuwege 2010).

For political science contributions to the EU as a Power debates, the problem of inconsistency becomes an analytical pitfall when categorising the EU’s ‘guiding principles’ or general objectives in broad terms, such as civilian ends, values, principles and/or norms. These broad and rather imprecise labels are frequently employed as ways to engage with the EU’s objectives and to describe and understand their causal effect in (and beyond) prominent contributions to the EU as a Power debates.<sup>14</sup>

For example, from a Civilian Power perspective, the EU can be seen to pursue civilian ends as its objectives (Orbie 2008). While there is disagreement on exactly what are these civilian ends, Smith has noted that they tend to include such lofty goals as international cooperation, solidarity, domestication of international relations (or strengthening the rule of law), responsibility for the global environment, and diffusion of equality, justice and

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<sup>12</sup> See also Larik (this volume) for two excellent legal arguments on why broadly worded norms (e.g., general objectives) are loose and have limited legal force.

<sup>13</sup> For a similar argument, see Croquet (this volume, 23-24).

<sup>14</sup> This is not the place to engage in the social science debate about the causality of norms/ideas v. interests or institutions, nor in the extent to which the EU’s norms are perhaps applied instrumentally. But it is worth pointing out that while this chapter takes a decidedly MPE perspective, the conceptualisation is not diametrically opposed to an understanding of such objectives as civilian ends or norms. Rather, if civilian ends and norms can be reliably linked to certain internal market-related policies and regulations, MPE can be used to test empirically the factors (market size, institutional features and interest contestation) that contribute to externalisation and the extent to which those norms are externalised.

tolerance (2005, 66). While these goals seem to fit within the scope of the Article 21 general objectives and may be normatively appealing, Smith argues that ‘the problem here is that these “civilian ends” are still quite fuzzily defined (for example, what does “solidarity” mean in terms of policy practice?)’ (2005, 67).

From another prominent contribution to these debates, we learn that the EU’s objectives can be similarly thought of as ‘norms’ instead of civilian ends. In his formulation of Normative Power Europe (NPE), Manners argues for consideration of five core norms – peace, liberty, democracy, rule of law and respect for human rights and fundamental freedoms – and four minor norms – social solidarity, anti-discrimination, sustainable development and good governance (Manners 2002). Again, these objectives remind us of the Article 21 general objectives and may be viewed as normatively ‘good’. Although these objectives are not identical to civilian ends, their rather broad and imprecise formulation remains the same. As a result, the analytical pitfall of inconsistency raises cautionary flags for work that understands objectives as these broad civilian ends and/or norms (Damro forthcoming 2015, Sjursen 2006).

Going back to the legal distinction between general and specific objectives, we see the likelihood and importance of this potential for inconsistency. For trade policy, the EU is bound by the Lisbon Treaty to pursue specific CCP objectives (Article 207) as well as the more general objectives of external action (Article 21). But this legal requirement creates a situation in which inconsistencies are likely to arise. As Dimopoulos notes, the drafters of the Lisbon Treaty included the Article 21 general objectives for external action in order to enhance consistency (2010, 161). But, in a sense, inconsistency is built into the system because these general objectives are extremely broad and there is no hierarchy established between them and the more specific policy objectives. Likewise, there is no hierarchy established among the various general objectives. In addition, discretion is given to political actors to interpret and pursue these imprecise general objectives while also pursuing the more precise and specific policy objectives. Therefore, while the Lisbon Treaty provides legal and institutional foundations for consistency (Article 21(3)), it does not eliminate the potential for inconsistencies to occur. Only the political actors can do that, which is why, in practice, the EU remains open to criticism over its perceived and/or real inconsistency.

In effect, the EU’s general objectives – which may be seen as rather imprecise civilian ends or norms – are best seen not as strict rules, but as guidance for EU external policy-making (see Larik, this volume). Therefore, instead of assessing the extent to which the EU externalises these broad, imprecise and potentially inconsistent general objectives, an MPE approach tends to focus the analysis on the externalisation of specific objectives, all of which are (operationally) reflected in and may be considered part of the EU’s market-related policies and regulatory measures. How precisely linked these specific objectives are to market-related policies and regulatory measures is a question deserving of empirical attention from legal scholars and political scientists, and which will be explored in the next section.

## **B. Overcoming Inconsistency**

In the context of this chapter, it is important to reiterate that while general non-trade objectives are based in the EU’s primary legislation (especially Article 21 TEU), exactly what they mean and include is not so clear. This, again, is where and why we encounter the analytical pitfall of inconsistency. However, if these general non-trade objectives can be made more precise and linked to less fuzzy market-related policies and regulatory measures,

then we can trace and determine empirically with more confidence the extent to which the EU actually externalises them.

This is not to say that MPE eliminates the problem of inconsistency *in practice*. It is only to say that it removes the complications that arise from trying to *analyse* the externalisation of general non-trade objectives. MPE does so by focusing on specific objectives that are reflected in market-related policies and regulatory measures. In other words, MPE encourages the use of more precise targets of analysis, which may include but are not analytically dependent upon or constrained by the broad and imprecise principles (ie, civilian ends and norms) equated with general non-trade objectives. An MPE analysis that finds evidence of the EU externalising a specific market-related policy or regulatory measure could, therefore, provide empirical support for the notion that a certain civilian end or norm has been exported. But the MPE approach and conceptualisation is only concerned with the externalisation of the specific market-related policy or regulatory measure (regardless of whether it is trade or non-trade), not the export of the fuzzy civilian end or norm.

An investigation of new generation trade policies helps to illustrate how the empirical approach of MPE can overcome the analytical pitfall of inconsistency. In particular, empirically linking together the two different types of new generation trade policies – an FTA and an autonomous initiative – allows MPE to scrutinise the externalisation of trade and non-trade objectives (all of which are part of the EU’s market-related policies and regulatory measures) while also avoiding the analytical pitfall of inconsistency.

To see this more clearly, it is useful to look at the EU’s first of a new generation of FTAs, that concluded with South Korea (see also Croquet, this volume). This agreement has 15 chapters, several annexes and appendices, three protocols and four understandings.<sup>15</sup> Chapters 1-12 and 14-15 are what might be considered traditional and more specific trade and trade-related objectives.<sup>16</sup> Chapter 13 is the crucial chapter for our purposes because it covers ‘Trade and Sustainable Development’. At first glance, it may seem that this FTA does not fit with the MPE approach because it includes the imprecise non-trade objective of sustainable development. But a closer look shows the ways in which this chapter can be understood and analysed, without fear of inconsistency, through an MPE approach.

First, as Croquet mentions (this volume), Chapter 13 does not provide detailed provisions on how to implement effectively the various and general non-trade objectives included in the agreement under the label of ‘sustainable development’. Rather, it sets broad and collective goals, the operationalization and implementation of which require further *inter-governmental negotiation*. The extent to which these non-trade objectives will be externalised and will link to EU market-related policies and regulatory measures will be determined to a large extent via such inter-governmental negotiation, which, in turn, will be conditioned by the size of the EU’s market and institutional features.<sup>17</sup> Simply agreeing them as collective goals in the actual FTA is not a guarantee of seamless adoption and implementation by South Korea.

The agreement also creates new avenues for other actors – in particular, civil society – to contribute to the inter-governmental negotiations. Article 13.12 creates an Institutional

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<sup>15</sup> [http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc\\_148303.pdf](http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc_148303.pdf), p. 3, accessed 22 January 2015.

<sup>16</sup> Chapters 1-11 cover traditional, specific trade objectives. Understood as specific ‘trade-related’ objectives, Chapter 12 covers Transparency, Chapter 14 covers Dispute Settlement, and Chapter 15 covers Institutional, General and Final Provisions.

<sup>17</sup> To clarify the inter-governmental interaction and negotiation, Article 13.14 establishes the institutional procedures for government consultation.

Mechanism to establish so-called Domestic Advisory Groups ‘on sustainable development (environment and labour) with the task of advising on the implementation of this Chapter’ (Article 13.12.4). These groups are to be comprised of ‘independent representative organisations of civil society in a balanced representation of environment, labour and business organisations as well as other relevant stakeholders’ (Article 13.12.5). These Domestic Advisory Groups, following the logic of MPE’s third characteristic of interest contestation, will input regularly into the ongoing process of inter-governmental negotiation and possible externalisation.<sup>18</sup>

Second, an even closer look at the EU-Korea FTA reveals how the two different types of new generation trade policies can be empirically linked to one another with an MPE approach to assess externalisation while avoiding the analytical pitfall of inconsistency. To show how this can be done, I take the example of an autonomous initiative discussed in this volume: the EU Regulation 995/2010 on illegal timber (see Koekkoek and Ryngaert, this volume; and Geraets and Natens, this volume).

Again, the FTA’s Chapter 13 suggests the presence of an imprecise and fuzzy non-trade objective: sustainable development. But in Article 13.11, the Parties recognise ‘the importance of cooperating on the more specific trade-related aspects of social and environmental policies in order to achieve the objectives of this Agreement’.<sup>19</sup> This clause also commits the Parties to thirteen cooperative activities listed in Annex 13 (see Figure 2).

## **Figure 2: Annex 13 of EU-Korea Free Trade Agreement**

### *Cooperation on Trade and Sustainable Development*

1. In order to promote the achievement of the objectives of Chapter Thirteen and to assist in the fulfilment of their obligations pursuant to it, the Parties have established the following indicative list of areas of cooperation:

- (a) exchange of views on the positive and negative impacts of this Agreement on sustainable development and ways to enhance, prevent or mitigate them, taking into account sustainability impact assessments carried out by the Parties;
- (b) cooperation in international fora responsible for social or environmental aspects of trade and sustainable development, including in particular the WTO, the ILO, the United Nations Environment Programme and multilateral environmental agreements;
- (c) cooperation with a view to promoting the ratification of fundamental and other ILO Conventions and multilateral environmental agreements with an impact on trade;
- (d) exchange of information and cooperation on corporate social responsibility and accountability, including on the effective implementation and follow-up of internationally agreed guidelines, fair and ethical trade, private and public certification and labelling schemes including eco-labelling and green public procurement;
- (e) exchange of views on the trade impact of environmental regulations, norms and standards;
- (f) cooperation on trade-related aspects of the current and future international climate change

<sup>18</sup> Their input will also be considered through their contributions to an annual Civil Society Forum that will meet ‘to conduct a dialogue encompassing sustainable development aspects of trade relations between the Parties’ (Article 13.13.1).

<sup>19</sup> On the scope of sustainable development in Chapter 13, Article 13.2 says ‘Except as otherwise provided in this Chapter, this Chapter applies to measures adopted or maintained by the Parties affecting trade-related aspects of labour and environmental issues...’ The Chapter includes multilateral labour standards and agreements (Art 13.4) and environmental agreements (13.5) and mentions that the Parties ‘highlight the value of greater policy coherence between trade policies, on the one hand, and employment and labour policies on the other’ (Art 13.6).

regime, including issues relating to global carbon markets, ways to address adverse effects of trade on climate, as well as means to promote low-carbon technologies and energy efficiency;

- (g) cooperation on trade-related aspects of biodiversity including in relation to biofuels;
- (h) cooperation on trade-related measures to promote sustainable fishing practices;
- (i) cooperation on trade-related measures to tackle the deforestation including by addressing problems regarding illegal logging;
- (j) cooperation on trade-related aspects of multilateral environmental agreements, including customs cooperation;
- (k) cooperation on trade-related aspects of the ILO Decent Work Agenda, including on the interlinkages between trade and full and productive employment, labour market adjustment, core labour standards, labour statistics, human resources development and life-long learning, social protection and social inclusion, social dialogue and gender equality;
- (l) exchange of views on the relationship between multilateral environmental agreements and international trade rules;
- or (m) other forms of environmental cooperation as the Parties may deem appropriate.

2. The Parties agree that it would be desirable if cooperative activities developed by them could have as broad an application and benefit as possible.

Source: Official Journal, EU-Korea Free Trade Agreement,  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2011:127:FULL&from=EN>  
accessed 22 January 2015.

Annex 13 clarifies more precisely what is included in the non-trade objective of sustainable development, what needs to be done to achieve the objectives of Chapter 13, and the various areas in which cooperation will occur. For example, Annex 13(i) mentions trade-related measures to tackle deforestation and illegal logging as an area of cooperation, which would contribute to the broad non-trade objective of sustainable development. But deforestation and illegal logging are usefully more specific than the general concept of sustainable development, and they can also be linked to a more specific EU regulatory measure, which increases their analytical precision. The intergovernmental negotiations (with input from the Domestic Advisory Groups) over future implementation in this area of cooperation may be persuasive or coercive, but the EU's position will reflect what it has already agreed in a relevant regulatory measure – the autonomous initiative Regulation 995/2010 on illegal timber.

To assess the EU's externalisation via the FTA and autonomous initiative, careful empirical tracing would help to determine the extent to which South Korea 1) adjusts its own regulations and/or behaviour related to illegal timber in ways that conform to or generally satisfy EU regulation and 2) made such adjustments as a result of the EU-Korea inter-governmental negotiation and other cooperation taking place under this Chapter and Annex of the FTA. One might find that the South Korean government and/or timber exporting firms have adjusted and now make legality verification arrangements and document the legality of their products. While sufficient evidence of this may be difficult to find, if such connections can be established empirically, then the EU may be said to have externalised its market-related regulatory measures on illegal timber via the tool of new generation trade policies. Empirical work can also reveal the ways and extent to which the three characteristics of MPE – market size, institutional features and interest contestation – influence and condition the externalisation of EU timber regulatory measures as established in a new generation trade policy (autonomous initiative) to South Korea via another new generation trade policy (FTA).

While this illustration may also be seen as an instance of the EU seemingly externalising the general objective of sustainable development, for analytical purposes it does not matter whether this particular outcome is consistent or inconsistent with, for example, the various other non-trade objectives listed in Annex 13(k). The EU certainly has market-related policies and regulatory measures linked to the general objective of sustainable development and other Annex 13(k) non-trade objectives like employment, labour standards, social protection and gender equality. But whether the EU pursues them consistently or inconsistently has no direct analytical implications for MPE. All that matters is whether the EU does or does not externalise the specific (timber) market-related policy or regulatory measure. If it does, then the EU has exercised its power of externalisation and South Korea – regardless of the extent to which it is consistent with other EU objectives – now adheres to a level of (timber) regulation similar to that in effect in the European single market or behaves in a way that generally satisfies or conforms to the EU’s (timber) market-related policies and regulatory measures.

Unlike MPE, the possibility of inconsistency in this case raises clear pitfalls for other contributions to the EU as a Power debates that rely upon civilian ends and norms. For example, if the EU exports its timber standards via EU Regulation 995/2010, then it may be seen as promoting sustainable development. However, the provisions of that regulation may not be consistent with the trade objective of liberalisation or the EU’s general objective of poverty eradication. Likewise, the provisions could be inconsistent with a whole host of – depending on how one chooses to interpret their fuzzy broadness – other general non-trade objectives associated with civilian power (e.g., international cooperation, solidarity, equality, tolerance) and normative power (e.g., peace, liberty, human rights, social solidarity, anti-discrimination). In such a case, the single instance of the EU promoting sustainable development may, in effect, seem to support civilian and normative conceptualisations. However, in the bigger picture, it would be difficult to judge such a finding as convincing evidence of either conceptualisation when the EU is simultaneously undermining so many other civilian ends and norms that are integral to these other conceptualisations of the EU as a power. As a result, the above illustration of moving away from general non-trade objectives toward the more specific market-related policies and regulatory measures demonstrates two benefits of taking an MPE approach: 1) as the analysis becomes more specific, the evaluation of externalisation becomes more methodologically and diagnostically precise and reliable; and 2) consistency with other general or specific objectives, whether trade or non-trade, matters less for analysing and understanding what the EU says, does and is as a power.

## **V. Conclusions**

Trade policy is one of the EU’s most prominent tools for externalisation of its internal economic and social market-related policies and regulatory measures. With the emergence of new generation trade policies (both trade agreements and autonomous initiatives), this tool may be increasingly used to externalise the trade and non-trade objectives that are reflected in these EU policies and measures. Such developments help to inform and reinforce a conceptualisation of the EU as Market Power Europe. At the same time, the inclusion of non-trade objectives in the EU’s trade policies can be a politically sensitive matter that complicates trade negotiations. However, despite the contentious nature and practical problems that may arise from such actions, the existence of the three characteristics of MPE -



market size, institutional features and interest contestation – helps us understand when and perhaps why the EU is likely to pursue non-trade objectives in new generation trade policies.

The MPE conceptualisation also helps to identify and overcome more analytical problems that arise when studying the externalisation of trade and non-trade objectives. In particular, the exploration of new generation trade policies brings to the fore the issue of consistency in EU external relations. Considerable legal and political science scholarship – while taking different approaches and focusing on different aspects – has grappled with this issue. But drawing together their disciplinary insights and viewing the issue within the context of the EU as a Power debates helps to demonstrate the problems that can be associated with this issue.

The analytical pitfall of inconsistency, however, can be overcome with an MPE approach that emphasises a narrower and more empirical tracing of the EU's externalisation of trade and non-trade objectives. In order to understand the EU as a power, MPE does not depend upon consistency across the EU's general or specific objectives, whether they be trade or non-trade. Rather, it provides an analytical framework through which the EU's externalisation of its internal policies and regulatory measures can be clearly understood and evaluated. It also helps to narrow and make more empirically manageable the analysis of the extent to which the EU's market size, institutional features and interest contestation contribute to the likelihood of externalisation. Such an approach is useful because it helps to show more clearly what the EU does as a power, helps us judge what the EU says as a power, and helps to clarify what kind of power the EU really is.

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